CF0000060869

(4) GA 935/96 (2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 390 Name हेमला भीमा

Father's Name पान्डु Resident ग्राम- चिन्दनार
थाना- गोंदिम, बस्तर

Age 23 Sentenced to आजीवन कारावास on 22/3/96

Under Section 302/34 I.P.C by द्वितीय अति० सत्र न्यायालय जगदलपुर

S.T No. 117/95

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may be heard at all if legal practioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 22.3.96
3. Date on which appeal sent :- 6.4.96
4. Whether the prisoner wished to be represented or not. Yes/No

No. 390 Name हेमला भीमा पिता पान्डु

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 292/3[illegible]01/96 Dated 6/4/96

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appleate Court.

Superintendent Central Jail/Sub-Jail.

Date of receipt in C.J.M's Office. 12.4.96

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 516 dated 13.4.96

Forwarded to the Hible Sessions Judge Jagdalpur

13/4/96

C.H.MAGISTRATE. मुख्य न्यायिक दण्डाधिकारी
जगदलपुर

Date of receipt in Applieate Court.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 935/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 935 of 1996

Appellant : Hemla Bhima

Vs.

Respondent : The State of Madhya Pradesh

Ms. Nirupama Bajpai, learned counsel for the appellant.
Shri U.N.S. Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, P.L. for the State/respondent.

ORAL JUDGMENT
(Delivered on 1st February 2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure accused/appellant Hemla Bhima has questioned the legality of judgment of conviction and order of sentence dated 22.03.96 passed by the Third Additional Sessions Judge, Jagdalpur in S.T. No. 117/95 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of one Hemla Chamru convicted him under Section 302/34 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

2. **Case of the prosecution, in brief, is that Sonku Ram P.W.-2 lodged a report (Ex.P-8) in police station Geedam on 29.09.94 to the effect that on**

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आदेश पत्रक

मामला क्रमांक C.A. No. 933/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that day on account of land dispute, accused Hemla Pandu and Hemla Bhima in furtherance of the common intention went to the house of Hemla Chamru who was sleeping in his house and Hemla Pandu with the axe and Hemla Bhima with the knife attacked Hemla Chamru and have committed his murder. The above incident was witnessed by Hemla Rame and Hemla Musre. Receiving this report Station House Officer registered the offence under Section 302/34 of the IPC, left for the scene of occurrence, after giving notice under Ex.P-9 and Ex.P-10 to the panchas prepared panchnama (Ex.P-11) of the body of Hemla Chamru. The accused/appellant Hemla Pandu gave memorandum P-2 and Hemla Bhima gave memorandum P-3 and in pursuance of that memorandum the axe was recovered under Ex.P-4 and from the memorandum of Hemla Bhima the knife was recovered under Ex.P.-5. The Investigating Officer took into possession plain soil and blood stained soil from the place of occurrence under Ex.P.6. Merg Intimation (Ex.P-7) was given by P.W.-2 Sonku Ram and based on that FIR (Ex.P.-8) was registered. The body was sent for post mortem examination under Ex.P-11 to the Primary Health Centre, Geedam where Dr. D. C. Arya conducted the post mortem and prepared the post mortem report (Ex.P-16). After completion of the Investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned Third Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

3. The prosecution in order to establish charge against the accused persons examined six witnesses. On the other hand the statement of the accused persons were also recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that they have been falsely implicated in the crime on account of animosity.

4 .Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant along with co-accused Hemla Pandu for the commission of the murder of Hemla Chamru as mentioned in paragraph 1 of this judgment. However co-accused Hemla Pandu had preferred a separate appeal and the same has been abated on account of his death during the pendency of the appeal.

5 We have heard Ms. Nirupama Bajpai, learned counsel for the accused/appellant and Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, P.L. on behalf of the State.

6 Homicidal death of Hemla Chamru is not in dispute.

7 As far the involvement of the accused in committing the murder of Hemla Chamru is concerned, P.W.-2 Sonku Ram lodged a report (Ex.P-7) in Police Station Geedam in which he had mentioned that the accused/appellant along with co-accused Hemla Pandu committed the murder of Hemla Chamru and the same was witnessed by P.W.3 Hemla Rame and P.W.-4 Hemla Kunjo. P.W.-3 Hemla Rame has stated that on the fateful day at about 11.00 a.m. she had gone to the residence of Hemla Chamru and when she reached the house of Hemla Chamru she saw that accused Pandu was attacking with axe and co-accused Hemla Bhima were attacking with knife to Hemla Chamru. On seeing her they ran away and she saw them running away. In the cross examination she has

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stated that she saw the accused persons running away. P.W.-4 Hemla Kunjo, wife of deceased Hemla Chamru has stated that accused persons murdered her husband and she saw them running away in the verandah of her house. In the cross examination she has stated that it is incorrect to say that she was not at her residence. In the cross-examination of these witnesses the defence has not been able to elicit that the crime in question has not been witnessed by these witnesses, therefore, we are of the considered opinion that there is nothing on record which makes these evidence untrustworthy or unreliable. The evidence of these witnesses stand corroborated by the medical evidence of post mortem report (Ex. P.-16) in which it has been mentioned that there was injury on the temporal region, incised wound was present near the right ear, temporal bone was fractured and carotid vessel and ear drum was damaged and therefore, in view of the ocular and medical evidence the involvement of the accused/appellant in the crime in question is established. Moreover, the weapons of offence were also recovered and therefore the accused along with co-accused were the authors of committing the murder of Hemla Chamru.

8 In the result, we do not find any substance in this appeal and the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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29.4.05